

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE  
TTAB

DEC. 11,98

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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J.G. Hook, Inc.  
v.  
Vaughn McCall  
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Opposition No. 101,645 to application Serial No. 74/718,287  
filed on August 21, 1995  
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Roberta Jacobs-Meadway, Joel S. Goldhammer and Ned E. Barlas of  
Panitch Schwarze Jacobs & Nadel, P.C. for J.G. Hook, Inc.

Vaughn McCall, pro se.  
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Before Cissel, Quinn and Hohein, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Vaughn McCall has filed an application to register the  
mark "HOOKUP" and design, as reproduced below,

The logo for "Hookup" is rendered in a stylized, hand-drawn font. The letter 'H' is significantly larger than the other letters and features a hook that curves upwards and to the right, ending in an arrowhead. The remaining letters 'o', 'o', 'k', 'u', 'p' are smaller and more rounded, following the same hand-drawn aesthetic.

for "clothing, namely t-shirts, jerseys, jackets, and jeans; footwear; and headgear, namely hats and caps".<sup>1</sup>

J.G. Hook, Inc. has opposed registration on the ground that it "has used 'J.G. HOOK', 'HOOK' and other marks ... (the 'HOOK' marks) as trademarks in commerce for men's, women's and children's wearing apparel since at least as early as 1975"; that, in particular, opposer is the owner of valid and subsisting registrations for the following marks and goods:

(1) the mark "J.G. HOOK" and design, as reproduced below,



for (a) "men's and women's sport shirts and women's dresses";<sup>2</sup> (b) "shirts, dresses, blouses, pants, socks, shorts, jackets, sweaters, skirts, kilts, belts, and scarves";<sup>3</sup> and (c) "men's outer jackets, overcoats, trench coats, rain coats, suits, sports coats and tailored pants";<sup>4</sup>

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<sup>1</sup> Ser. No. 74/718,287, filed on August 21, 1995, which alleges a date of first use anywhere of February 5, 1993 and a date of first use in commerce of August 18, 1994.

<sup>2</sup> Reg. No. 1,068,167, issued on June 21, 1977, which sets forth dates of first use of August 12, 1975; renewed. The registration states that: "The name 'J.G. Hook' is fanciful and is not the name of a particular living individual."

<sup>3</sup> Reg. No. 1,193,945, issued on April 20, 1982, which sets forth dates of first use of August 12, 1975; combined affidavit §§8 and 15. The registration, which also covers "jewelry," indicates that: "[T]he mark 'J.G. Hook' is not the name of a particular living individual and the title is fanciful."

<sup>4</sup> Reg. No. 1,305,088, issued on November 13, 1984, which sets forth dates of first use of January 13, 1983; combined affidavit §§8 and 15.

(2) the mark "J.G.HOOK" and design, as illustrated below,



J.G.HOOK

for "handbags, wallets, brief cases and luggage";<sup>5</sup>

(3) the mark "J. G. HOOK" and design, as depicted below,



J.G.HOOK

for "women's clothing, namely, shirts, dresses, blouses, pants, socks, shorts, jackets, coats, sweaters, skirts, kilts, belts, and scarves; and men's clothing, namely, outer jackets, overcoats, trench coats, rain coats, suits, sports coats and tailored pants";<sup>6</sup>

(4) the mark "HOOK SPORT" and design, as shown below,



HOOK  
SPORT

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<sup>5</sup> Reg. No. 1,231,924, issued on March 22, 1983, which sets forth dates of first use of December 1980; combined affidavit §§8 and 15. The registration recites that: "The name 'J.G. Hook' is merely fanciful and does not identify a particular individual."

<sup>6</sup> Reg. No. 1,617,734, issued on October 16, 1990, which sets forth dates of first use of January 1, 1986; combined affidavit §§8 and 15.

for "ladies' sportswear, namely, pants, short[s], shirts, blouses, sweaters, jackets, coats and dresses";<sup>7</sup>

(5) the mark "HOOK WEAR" and design, as reproduced below,



for "men's, women's and children's wearing apparel; namely, pants, shorts, shirts, dresses, shirts [sic], blouses, vests, sweaters, jackets, and coats";<sup>8</sup>

(6) the mark "J.G. HOOK JEANSWEAR" for "jeans, pants, skirts, shorts, shirts and jackets";<sup>9</sup>

(7) the mark "J.G. HOOK JEANSWEAR" and design, as depicted below,



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<sup>7</sup> Reg. No. 1,620,047, issued on October 30, 1990, which sets forth dates of first use of December 1, 1989; combined affidavit §§8 and 15. The word "SPORT" is disclaimed.

<sup>8</sup> Reg. No. 1,733,210, issued on November 17, 1992, which sets forth dates of first use of November 1, 1991; combined affidavit §§8 and 15. The term "WEAR" is disclaimed.

<sup>9</sup> Reg. No. 1,768,122, issued on April 27, 1993, which sets forth dates of first use of July 15, 1992. The term "JEANSWEAR" is disclaimed.

for "jeans, pants, skirts, shorts, shirts and jackets";<sup>10</sup>

(8) the mark "J.G. HOOK" for "men's and women's apparel; namely, suits, pants, skirts, dresses, shorts, sweaters, coats, rainwear, jackets, blazers, vests, socks, scarves, shirts and blouses";<sup>11</sup> and

(9) the mark "HOOK SUIT" and design, as illustrated below,



for "men's and women's apparel; namely, suits, pants, skirts, shorts and jackets";<sup>12</sup>

that opposer "is well known in the relevant trade and by consumers as 'HOOK'"; that its "'HOOK' [m]arks are extremely well and favorably known to retailers and others in the relevant trade as the marks of Hook"; that the goods sold by applicant under his "HOOKUP" and design mark "are similar to those sold under [opposer's] ... 'HOOK' [m]arks"; that such goods "are advertised and promoted in the same ways"; that the respective goods "are

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<sup>10</sup> Reg. No. 1,817,982, issued on January 25, 1994, which sets forth dates of first use of July 15, 1992. The term "JEANSWEAR" is disclaimed. In addition, the registration states that: "'J.G. HOOK' does not identify a living individual."

<sup>11</sup> Reg. No. 1,814,984, issued on January 4, 1994, which sets forth dates of first use of August 12, 1975. The registration indicates that: "'J.G. HOOK' is a fictitious name and does not identify any living individual."

<sup>12</sup> Reg. No. 1,836,229, issued on May 10, 1994, which sets forth dates of first use of July 1, 1992. The word "SUIT" is disclaimed.

purchased by the same class of customers"; and that applicant's mark, when used in connection with his goods, "so resembles [opposer's] ... 'HOOK' [m]arks" as to be likely to cause confusion, mistake or deception.

Applicant, in his answer, has admitted that opposer is the owner of the registrations pleaded in the notice of opposition and that such registrations are valid and subsisting, but has otherwise denied the salient allegations of the notice of opposition.

The record includes the pleadings; the file of the involved application; and, as part of opposer's case-in-chief, the testimony, with exhibits, of its president and chief operating officer, Gary Kane. Opposer, as the rest of its case-in-chief, submitted a notice of reliance upon certified copies of its previously mentioned registrations, showing in each instance that the registrations are subsisting and owned by opposer, and filed a notice of reliance on various articles from printed publications in general circulation.<sup>13</sup> Applicant, however, did not take testimony, nor did he otherwise properly introduce any evidence in his behalf.<sup>14</sup> Briefs have been filed, but an oral hearing was not requested.

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<sup>13</sup> Although opposer, among other things, asserts in the notice of reliance that such "material is relevant to the issue of fame of Opposer's 'Hook' marks," it is pointed out that, to the extent that the text of the articles is relied upon to establish the truth of the statements therein, such statements are clearly hearsay and thus fail to demonstrate the claimed fame of opposer's marks.

<sup>14</sup> Opposer, on August 1, 1997, filed an motion "to strike exhibits attached to, and inadmissible factual statements contained within, Applicant's Trial Brief" since the exhibits "were not made of record during Applicant's testimony period." Inasmuch as the motion, which

Opposer's priority of use of the "HOOK"-formative marks which are the subjects of its pleaded registrations is not in issue inasmuch as the certified copies of such registrations show that the registrations, as admitted by applicant in his answer, are subsisting and owned by opposer. See King Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974). The record, in any event, establishes that, with the exception of its "HOOK SPORT" mark for girls' sportswear, opposer is in fact the prior user of its various "J.G. HOOK" marks and the derivatives thereof, such as its "HOOK SPORT," "HOOK WEAR" and "HOOK SUIT" marks for clothing.<sup>15</sup> The only real issue to be determined, therefore, is whether applicant's "HOOKUP" and design mark, when used in connection with t-shirts, jerseys, jackets, jeans, hats, caps and footwear, so resembles one or more of opposer's various "HOOK"-formative marks for a variety of wearing apparel that confusion is likely as to the source or sponsorship of the parties' respective goods.<sup>16</sup>

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is uncontested, is in any event well taken, the motion is granted. Trademark Rules 2.127(a) and (1); and TBMP §540. We hasten to add, however, that even if such exhibits were considered as part of the evidentiary record, they would make no difference in the disposition of this case.

<sup>15</sup> Applicant, having failed to take testimony or otherwise properly present evidence in his behalf, is limited to the August 21, 1995 filing date of his application as the earliest date on which he can rely in this proceeding. See, e.g., Lone Star Manufacturing Co., Inc. v. Bill Beasley, Inc., 498 F.2d 906, 182 USPQ 368, 369 (CCPA 1974) and Columbia Steel Tank Co. v. Union Tank & Supply Co., 277 F.2d 192, 125 USPQ 406, 407 (CCPA 1960).

<sup>16</sup> To the extent that opposer, by referring to "the J.G. Hook family of marks" in its reply brief, appears to be relying upon the contention that it has a family of marks for its products which is based on the word "HOOK," we note that as stated in J & J Snack Foods Corp. v. McDonald's Corp., 932 F.2d 1460, 18 USPQ2d 1889, 1891-92 (Fed. Cir. 1991):

According to the record, opposer was founded in 1974 by Max Raab, who coined the name "J.G. HOOK"<sup>17</sup> and is currently the sole owner of opposer as well as its chief executive officer, chairman of the board and creative director. Opposer initially manufactured shirts under its "J.G. HOOK" marks before expanding

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A family of marks is a group of marks having a recognizable common characteristic, wherein the marks are composed and used in such a way that the public associates not only the individual marks, but the common characteristic of the family, with the trademark owner. Simply using a series of similar marks does not of itself establish the existence of a family. There must be a recognition among the purchasing public that the common characteristic is indicative of a common origin of the goods. ....

Recognition of the family is achieved when the pattern of usage of the common element is sufficient to be indicative of the origin of the family. It is thus necessary to consider the use, advertisement, and distinctiveness of the marks, including assessment of the contribution of the common feature to the recognition of the marks as of common origin.

Contrary to the reference in opposer's reply brief, it simply cannot be said on this record that opposer has demonstrated the existence of a family of "HOOK"-formative marks. The evidence fails to show that such marks have been promoted in a manner sufficient to create a recognition or awareness among the purchasing public of the common ownership thereof so that a family of marks, characterized by the term "HOOK" as its distinguishing element, in fact exists. See, e.g., La Maur, Inc. v. Bagwells Enterprises, Inc., 199 USPQ 601, 606 (TTAB 1978) and Polaroid Corp. v. American Screen Process Equipment Co., 166 USPQ 151, 154 (TTAB 1970). Moreover, the mere ownership of a number of marks sharing a common feature, or even ownership of many registrations therefor, is alone insufficient to demonstrate that a family of marks exists. See, e.g., Hester Industries, Inc. v. Tyson Foods, Inc., 2 USPQ2d 1646, 1647 (TTAB 1987); Consolidated Foods Corp. v. Sherwood Medical Industries Inc., 177 USPQ 279, 282 (TTAB 1973); Polaroid Corp. v. American Screen Process Equipment Co., supra; and Polaroid Corp. v. Richard Mfg. Co., 341 F.2d 150, 144 USPQ 419, 421 (CCPA 1965). Accordingly, since opposer has not established its assertion of a family of "HOOK" marks, the issue of likelihood of confusion must be determined by comparing applicant's mark for his goods with each of opposer's marks for its various products.

<sup>17</sup> In particular, Mr. Kane testified that, in keeping with a nautical theme for opposer's marks and products: "Max Raab, when he was dreaming this up, J.G. was for junior grade, meaning junior grade officer, and Hook was another name for an anchor, so the hook or the anchor became very important to us." (Kane dep. at 40.)

into women's sportswear. In 1989, however, opposer transformed itself from a manufacturer of clothing to a licensing company under which all of its goods were made and sold by other manufacturers through licenses of opposer's various "HOOK"-formative marks. Such arrangement lasted until late 1995. At present, opposer is "primarily a licensor" of such marks, having begun its licensing program in 1982 with men's wear, boys' wear and certain items of women's wear. (Kane dep. at 6.) Opposer, however, "recently" has "formed a joint venture for manufacturing and distributing women's coordinated sportswear," including sports jackets, skirts, sweaters, pants, blouses and tops and bottoms, under its "J.G. HOOK" marks. (Id.) Opposer currently sells "adult clothing, both genders; children's clothing, both genders; all the accessory items that go with both, and a complete line of home furnishings." (Id. at 9.) In particular, Mr. Kane emphasized that, like applicant, opposer sells t-shirts and, in fact, has sold "tons of them". (Id. at 59.) Opposer applies its various marks to its clothing using labels, hang tags and neck inserts.

Opposer, at the time Mr. Kane joined the company in 1986, had yearly sales of over \$100 million, of which its J.G. Hook division generated "about \$70 million". (Id. at 10.) In addition to tailored traditional or career clothing for men and women which, like its boys' and girls' apparel, it has continuously sold under its "J.G. HOOK" marks, opposer since at about 1989 has sold casual sportswear, including socks, t-shirts,

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sweat clothes and women's jogging suits, under the mark "HOOK SPORT". Since about 1992, opposer has licensed its "J.G. HOOK" marks for such men's wear accessories as belts. Currently, in its tailored men's clothing lines, opposer has annual sales of between \$4 million to \$5 million, while yearly sales of casual men's sportswear amount to "around \$4 million and climbing."

(Id. at 24.) While sales of its men's belts are "very embryonic" and those of "socks are just getting started," opposer's present annual sales of men's "dress shirts are about a million dollars." (Id.)

Opposer's yearly sales of children's apparel, which started with sales of boys' clothing in 1982, have ranged from "a million or so" initially to "about \$8 million, which is a very sizable boyswear company," according to Mr. Kane, who also noted that the latter figure was "pretty evenly broken down between J.G. Hook and Hook Sport." (Id. at 25.) Around 1992, opposer commenced licensing its "J.G. HOOK" marks for girls' dresses and began licensing its "HOOK SPORT" mark for girls' sportswear in the latter part of 1996.

Opposer is responsible for all of its national advertising, with the ads for its goods being created by its "own in-house advertising agency". (Id. at 28.) Opposer's women's wear items are nationally advertised in such magazines as Marie Claire, Redbook, Fashions of The Times and Mirabella, while its men's wear products are promoted nationwide in such publications as Esquire and GQ. Opposer is also "the largest apparel manufacturer in New York [City] ... to advertise on urban

panels," which Mr. Kane described as being "an above-ground advertising vehicle that is on or around a subway stop ...." (Id. at 32.) In addition, opposer promotes its goods by distributing press kits concerning its newest fashion collections to magazine and newspaper editors who cover the apparel trade.<sup>18</sup> Opposer coordinates its national advertising campaigns so as to link all of its various products, including those manufactured and sold by its licensees, with its "J.G. HOOK" marks and trade name.<sup>19</sup> Opposer's licensees, "by contrast, are responsible for paying for all co-op advertising; all trade publications; [and] any space ... they take for [trade] shows, [or] showrooms". (Id. at 29.) Opposer, however, assists its licensees by providing them with camera-ready artwork for use in their advertising of its goods.

The channels of trade through which opposer's clothes are distributed include such mail-order catalog outlets as the

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<sup>18</sup> A sample press kit includes, inter alia, a photograph which contains the caption: "This red-and-white-striped 'henley' tee-shirt from J.G. Hook lends a nautical feeling to comfortable khaki drawstring shorts." (Opposer's Exhibit 9.)

<sup>19</sup> The reason for coordinated advertising, Mr. Kane explained, is to "make sure that the consumer understands that J.G. Hook [merchandise] came from the same mother." (Kane dep. at 56.) Specifically, he noted that:

As knowledgeable as ... consumers are out there, they have no clue that we have over 30 licensees marking this product, just as they have no clue that Ralph Lauren doesn't sit there and sew all those garments together in his basement.

When they see this [advertising] in these various publications, they have to think that J.G. Hook was developed and marketed and sold all under one big roof.

(Id.)

upscale Bloomingdale's by Mail and the "deep discounter" Chadwick's. (Id. at 33.) At the retail store level, opposer's goods are "in all the department stores ... and thousands of specialty stores," ranging "all the way from some of the higher echelon Federated stores all the way down to but not including Wal-Mart" or "anything with a 'mart' on the end" of its name. (Id. at 34.) Specifically, the apparel marketed under opposer's "J.G. HOOK" marks and its "HOOK SPORT," "HOOK WEAR" and "HOOK SUIT" derivatives thereof are sold, in the case of its women's wear, through such retail outlets as "Stern's," "Parisian," "JCPenney," "Von Maur" and "Belk," while its men's wear is sold in such stores as "Dunlop," "JCPenney," "Belk" and "AFF" (Army and Air Force Exchange). The children's clothing sold under opposer's marks is available through "Federated stores, Dayton-Hudson, Nordstrom, ... [and] JCPenney." (Id. at 35.) Basically, according to Mr. Kane, opposer sells its "J.C. HOOK" brands of clothes "coast to coast," that is, in all 50 states as well as all U.S. territories and possessions.<sup>20</sup> (Id.)

Opposer is often referred to by store buyers and in the garment trade press simply as "Hook". In particular, after first being mentioned in an article by its full name of J.G. Hook, the article thereafter will typically refer to opposer as just "Hook". On occasion, publications have made a play on opposer's name, such as an August 24, 1988 article from WWD (Women's Wear

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<sup>20</sup> The record also reveals that, due to its success in selling apparel under its marks, opposer in the past five years has expanded its licensing program to include eyewear and, as mentioned earlier, home

Daily) headlined: "Liberty of London has a new Hook-up; J.G. Hook Inc. uses Liberty of London fabrics for line of sportswear". Consumers also customarily refer to opposer simply as "Hook". Opposer, as a reflection thereof, has successfully policed its "Hook" name and "HOOK"-formative marks, having prevailed upon a party to abandon an application to register the mark "HOOK UP" and a hook design for clothing items which included t-shirts and sweat shirts, while obtaining from another party a surrender of a registration for the mark "HOOKA STYLE" for hats, shirts, sweaters and jeans.<sup>21</sup>

Finally, according to Mr. Kane, opposer is concerned about the "HOOKUP" and design mark which applicant seeks to register because: "Our name is very widely recognized as a name associated with classical American-made merchandise . . . , good perceived value, [and] a very high quality level." (Id. at 74.) As a result, Mr. Kane testified that:

We are not going to let anything interfere with the retailers' or the consumers' perception of J.G. Hook. And it's not only J.G. Hook, but it's all our derivative names that look and sound so much like this one that Mr. McCall wants to use. And not only does he want to use our name, but he wants to throw a hook or an anchor up in the front of it to further confuse or mislead people, and we just absolutely won't tolerate it.

(Id.) Applicant, as noted previously, offered no properly admissible evidence in support of its application to register.

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furnishings such as furniture, wallpaper, bedding, lamps, decorative pillows and floral pieces.

<sup>21</sup> In addition, opposer has secured the abandonment of another party's application to register the mark "HOOK UP" for jewelry.

Turning to the issue of likelihood of confusion, we find upon consideration of the pertinent factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973), that confusion as to source or affiliation is likely to occur. As a starting point, it is settled that the registrability of an applicant's mark must be evaluated on the basis of the identifications of goods set forth in the involved application and each of the registrations of record, regardless of what the record may reveal as to the particular nature of the respective goods, their actual channels of trade, or the class of purchasers to which they are in fact directed and sold. See, e.g., *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) and *Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815-16 (Fed. Cir. 1987). In particular, it is well settled that, absent any specific limitations or restrictions in the identifications of goods as listed in the applicant's application and the opposer's registrations, the issue of likelihood of confusion must be determined in light of consideration of all normal and usual channels of trade and methods of distribution for the respective goods. See, e.g., *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983); and *Paula Payne Products Co. v. Johnson Publishing Co., Inc.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973).

Here, applicant's goods are broadly identified in his application as "clothing, namely t-shirts, jerseys, jackets, and

jeans; footwear; and headgear, namely hats and caps ". As so described, such goods plainly are identical in part and are otherwise complementary, and hence closely related, to the items of clothing identified in opposer's registrations, which also broadly set forth its apparel products. In particular, as to those goods which are identical in legal contemplation, it is clear that applicant's "t-shirts" and "jerseys" are respectively encompassed by, for instance, registrant's "shirts" and "sweaters,"<sup>22</sup> while both parties market items generically known as "jackets" and "jeans". Thus, even if the record reflected applicant's arguments that the actual channels of trade and customers for such goods are different, with applicant's "unconventional, untraditional" t-shirts, jerseys, jackets, jeans, footwear, caps and hats being "sold in small stores" to purchasers who are "exactly opposite" to those who purchase opposer's "traditional and conventional" clothing, it is still the case that the parties' items of apparel must be considered as suitable for sale through the same channels of trade, including department stores, specialty clothing retailers and mail-order outlets, to the same classes of ordinary consumers, such as teenagers and adults. Clearly, if the same or complementary items of wearing apparel were to be sold under identical or

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<sup>22</sup> We judicially notice, in this regard, that The Random House Dictionary of the English Language (2d. ed. 1987) at 1027 lists "jersey" as meaning, inter alia, "1. a close-fitting, knitted sweater or shirt." It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., Hancock v. American Steel & Wire Co. of New Jersey, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc., 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

similar marks, confusion as to the origin or affiliation thereof would be likely to occur.

Applicant contends, however, that confusion is not likely because his "HOOKUP" and design mark "has several distinguishing characteristics that sets [sic] it apart from any other marks, particularly J.G. Hook and [its various] Hook brands." Specifically, notwithstanding opposer's assertion that "[t]he letter 'H' in McCall's HOOKUP Mark comprises a stylized hook, which is visually similar to the anchor design [and letter 'J'] of the various HOOK Marks," applicant maintains that:

[T]he "H" by itself visually says Hookup. Now lets [sic] compare the letters. Hookup uses unconventional letters [and] even the two "Os" in Hookup are different from each other. And about the "H" which opposer claims resembles a "J", a close look obviously shows a Hook connected by a bar to an arrow representing the "UP" in HOOKUP! And finally lets [sic] take a look at the hooks. The hook in Hookup is displayed always with the bar and arrow pointing up, with just the "H" or total word Hookup and design. The J.G. Hook brand uses an anchor style hook with a conventional design [of] letters. Hookup has an unconventional design, [incorporating] a fish hook and an arrow in its design.

However, as opposer correctly notes, our principal reviewing court has pointed out the general proposition that, "[w]hen marks would appear on virtually identical goods ..., the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). We agree with opposer that, when the respective marks are considered in their entirety, applicant's "HOOKUP" and design mark is

substantially similar in sound, appearance, connotation and overall commercial impression to each of opposer's "J.G. HOOK" marks, including its "J.G. HOOK JEANSWEAR" marks, and their derivative "HOOK SPORT," "HOOK WEAR" and "HOOK SUIT" marks. Both applicant's mark and each of opposer's marks, in particular, share the arbitrary term "HOOK" as a prominent and distinguishing feature thereof. Moreover, as opposer accurately observes, applicant's "hook design [in the letter 'H'] looks like the letter 'J', thereby giving the visual impression of 'J HOOKUP,' [and thus] further aggravating the likelihood of confusion between the HOOKUP Mark and the J.G. HOOK and the other HOOK Marks."

While, as applicant maintains, there are indeed differences between his mark and each of opposer's marks that are apparent on the basis of a side-by-side comparison,<sup>23</sup> when the respective marks are used in connection with items of apparel, the overall commercial impression engendered by applicant's mark is substantially similar to that projected by each of opposer's marks. The record, moreover, reflects that opposer customarily is known both in the garment trade and to the retail purchasing

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<sup>23</sup> A side-by-side comparison, however, is not the proper test to be used in determining the issue of likelihood of confusion since it is not the ordinary way that consumers will be exposed to the marks. Rather, it is the similarity of the general overall commercial impression engendered by the marks which must determine, due to the fallibility of memory and the consequent lack of perfect recall, whether confusion as to source or sponsorship is likely. The proper emphasis is thus on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks or service marks. See, e.g., In re United Service Distributors, Inc., 229 USPQ 237, 239 (TTAB 1986); and In re Solar Energy Corp., 217 USPQ 743, 745 (TTAB 1983).

public simply as "Hook" and that there are no other entities in the fashion field, as evidenced among other things by opposer's having successfully policed its marks, which utilize marks for wearing apparel which feature the word "HOOK" as their distinguishing element. Additionally, although we cannot agree with opposer that, on this record, its various "J.G. HOOK" marks and the derivatives thereof are famous marks, opposer has sufficiently established that, beginning in 1975, it has had substantial nationwide sales of apparel under its various "HOOK"-formative marks and has made appreciable coordinated promotional efforts, through the distribution of press kits and print advertising, so as to link all of its clothing products, including those manufactured and sold by its licensees, with its "J.G. HOOK" marks and trade name. In view thereof, opposer's various "J.G. HOOK," "J.G. HOOK JEANSWEAR," "HOOK SPORT," "HOOK WEAR" and "HOOK SUIT" marks must be considered to be relatively well known marks which, having achieved a measure of strength and recognition as indicia of source and quality of product, are correspondingly entitled to a broader scope of protection.

Consequently, consumers and those in the apparel field could reasonably believe, upon encountering applicant's highly similar "HOOKUP" and design mark for t-shirts, jerseys, jackets, jeans, footwear, hats and/or caps, that such items of apparel are part of a new or expanded line of goods emanating from or sponsored by the same entity which markets clothing for men, women and children under the marks "J.G. HOOK," "J.G. HOOK JEANSWEAR," "HOOK SPORT," "HOOK WEAR" and "HOOK SUIT".

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**Decision:** The opposition is sustained and registration to applicant is refused.

R. F. Cissel

T. J. Quinn

G. D. Hohein  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board